

STATEMENT  
OF  
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BEFORE THE  
COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
CONCERNING  
THE REPORT OF THE NATIONAL GAMBLING IMPACT STUDY COMMISSION  
PRESENTED ON  
JUNE 23, 1999

Mr. Chairman, members of the Committee, I would like to address the National Gambling Impact Study Commission's interpretation of the role gaming has played in the development of economies on Indian lands. Specifically, I am concerned that the casual reader of this report may not fully appreciate the degree to which tribes are using their revenues to diversify their economies or regulate their gaming activities.

## **Economic Development**

Chapter 6 of this report correctly notes that Indian gambling has not been a panacea for the many economic and social problems that Native Americans continue to face. This statement is correct for two reasons in my opinion: first, the needs throughout Indian country are overwhelmingly profound; and second, only approximately one-third of all tribes are located where a political or demographic environment will allow gaming to prevail.

However, in supporting this point the Commission's report appears to be in conflict. Chapter 6 appears to do a fine job in illustrating the failure of the United States to hold up their Trust Responsibility toward the tribes and also points out the tremendous strides tribes have taken to address the social ills that have cast their shadows upon our lands. <sup>2</sup> However, in Chapter 7, the Commission also stated that "economic benefits of Indian gambling cannot be factually proven". To this end the Commission recommend that "tribal governments should be encouraged to use some of the net revenues derived from Indian gambling as 'seed money' to further diversify tribal economies and to reduce their dependence on gambling".

Mr. Chairman, as you know, Tribes must constantly struggle with the question "what should we do first?" Because of the pressing health and social problems that exist on most reservations it is politically difficult for tribal leaders to divert scarce gaming funds into economic development projects as opposed to hiring a new physician or building a new Headstart program. How can I explain to our tribal members that the Tribe should invest money in a new high-tech circuit board manufacturing facility when it takes them six-months to simply see a dentist?

Likewise, while the report does a credible job outlining the significant legal basis for Indian gaming and the underpinnings of the Indian Gaming Regulatory Act, the report simply fails to discuss the complete lack of alternative revenue sources that may exist for Indian tribal governments. Rather than spending funds on research to identify potential alternative revenue sources the Commission simply stated that "There was no evidence presented to the Commission suggesting any viable approach to economic development across the broad spectrum of Indian country, in the absence of gambling".

In my view, this failure represents a disservice to those tribes who might have been looking for the Commission to offer substantive recommendations to assist them in diversifying their economies.

On one hand, over 100 tribal leaders representing over 50 tribes spent tribal funds to travel to the various Commission meetings to tell their story of economic development. Unfortunately, the Commission chose to question the legitimacy of these presentations and asks whether the economic benefits from Indian gaming can be "factually proven". On the other hand, because tribes were themselves unable to offer any form of broadly based replacement for gaming funds, tribes are criticized for not having invested enough in non-gaming forms of economic development.

It should be noted that after spending \$5 million this Commission visited a total of two reservations-the Mashantucket Pequot Nation and the Gila River Indian Community. Although these Tribes each demonstrate a significant level of commitment to economic development, they are only two among many tribes that have used gaming resources to diversify their economies. In that both of these tribes represent the most successful portion of the spectrum, it might have been of greater value for the Commission to have visited reservations where job creation was a primary goal in establishing gaming.

### **Oneida's Experience**

The Oneida Nation has used its financial resources in an effort to diversify our economy and reduce our long-term dependence on gaming as our primary income generating activity. We believe our success in this area benefits both the Oneida Tribe and its local non-Indian neighboring communities. The result is a strong independent community with an orderly, flexible and stable government.

The Tribe has an enrolled membership of about 1500 with approximately 5100 living either on or near the Oneida Reservation. The Reservation encompasses a 65,000-acre tract of land, located approximately 8 miles southwest of Green Bay. Today we own approximately one-sixth of the property within the 65,000 acres of land within the reservation boundary, and we are vigorously pursuing more lands as they become available.

One of the major goals of the Oneida Nation is to forge a true and lasting partnership with the citizens, businesses and local governments of the Northeast Wisconsin area. Our positive working relationship with the City of Green Bay, the Village of Ashwaubenon, and the City of DePere are perfect examples of our efforts to work as true partners to build a relationship that fosters economic growth that benefits everyone.

As Northeast Wisconsin's largest employer, we are extremely proud that over 60% of our 3,561 employees are non-Oneida and our Oneida enterprises are one of the major reasons why the Greater Green Bay area enjoys one of the lowest unemployment rates in the nation. The Oneida Nation generates an annual payroll of \$80 million, fueling consumer spending that impacts all of Northeastern Wisconsin.

As the Oneida Nation works toward our number one goal of diversifying our economy, our efforts will continue to benefit the surrounding area because our enterprises will become more diverse and comprehensive, fostering new dynamic economic growth in Northeast Wisconsin.

Outside of gaming, the Oneida Nation has acquired or invested in the following enterprises:

The **Oneida Radisson Inn** is a 301 -room hotel located across the street from the Austin Straubel Airport in Green Bay and sits adjacent to the Tribe's casino. The hotel employs over 400 full and part-time positions and has provided management training opportunities for many tribal members. Additionally, the Radisson generates over \$500,000 annually to the Green Bay Area Convention Bureau.

We have invested \$7.2 million in **Oneida Nation Electronics**, a joint venture with the Plexus Corporation of Neehnah, WI to manufacture printed circuit assemblies for a variety of customers and industries. This 14,000 square foot, state-of-the-art high tech manufacturing facility provides high quality, customer oriented turnkey electronic manufacturing services. It is anticipated that our investment in this joint venture will bring a 20% annual return over a 10 year period and provide an opportunity for many tribal members to gain jobs in the electronics industry.

The Oneida Nation has invested \$40 million in equity and debt into **Airadigm Communications, Inc.** Airadigm is a PCS (Personal Communications Service) provider which garnered 15 licenses in the FCC auctions, covering all of Wisconsin, except Milwaukee, portions of Michigan, and the Eastern third of Iowa. It has over 12,000 customers and employs over 120 people throughout Wisconsin. Airadigm Communications has generated over \$100 million in additional revenues for its vendors throughout the state and nation. The advanced digital service supplies communications capabilities to numerous tribal reservations, and acts as a lifeline communications

support for many of its customers. Furthermore, it has forced competition into an otherwise stagnant marketplace.

The **Oneida Industrial Park** is a 32 acre land development with 18 retail stores including Sam's Wholesale, Wal-Mart and Festival Foods as anchors. The tribe collects lease payments generated from long-term lease agreements.

**Seven Generations Corporation** is a Limited Liability Corporation developed for the purposes of overseeing the commercial properties for the Tribe. Serving as a holding company for real estate and other business ventures of the Nation, this enterprise has leased a 50,000 square foot health facility to Bellin Health Systems, a family medicine patient care facility specializing in sports medicine, physical therapy, fitness, diagnostic testing and administrative and ancillary services.

**Baybank** is a locally owned, full service bank located on the Oneida Reservation. Baybank provides friendly service and competitive interest rates on deposits, loans and Certificates of Deposit. The bank has been open for over three years and is profitable.

**The Oneida Small Business Development Center** provides counseling, training, and technical support in all areas of small business management. OSBDC's loan fund facilitates the creation of a small business environment on sovereign lands.

Other Oneida developments and enterprises include: Oneida Printing, Oneida Nation Farms, Oneida Promotions, and three One-Stops-self service gas stations and small convenience stores.

## **Regulation**

Unfortunately, the Commission did an inadequate job in presenting the status of current law with respect to the regulatory nature of Indian gaming. The Commission failed to capture the investment tribes have made, through their tribal gaming commissions, to ensure the protection of their patrons and insulate themselves from illegal activity or intrusions by organized crime. The report neglected to acknowledge the extent to which class III games are regulated under the terms of the more than 140 tribal-state compacts. And finally, the report failed to fully describe the extent to which the National Indian Gaming Commission is involved in conducting background investigations and field audits.

Each year, the Oneida Nation spends over \$9 million on the internal regulation and protection of our gaming facilities and employees. Our control systems and audit procedures are equivalent to those found anywhere in the world. It is this level of commitment that tribes have brought to gaming throughout America, but the Commission failed to comment upon.

Although the Commission did adopt a recommendation that acknowledges the National Indian Gaming Commission's newly implemented Minimum Internal Control Standards, developed with the help of the National Tribal Gaming Commissioners and Regulators, the report fails to include any finding in support of this recommendations This omission works to undercut the legitimacy of tribal gaming and diminishes the importance of gaming as a form of well regulated economic development.

Also, the Commission failed to articulate the true status of off reservation land transfers for gaming purposes. This Commission had a real opportunity to clarify this point of great confusion for many communities across America. As this Committee knows, in the eleven years since IGRA's enactment, the Bureau of Indian Affairs has reviewed ten land in trust acquisition applications to operate off-reservation casinos. The BIA accepted two and rejected eight. The Forest County Potawatomi Tribe located in Milwaukee, WI in 1990 with a 15.7 acres site and Kalispel Tribe, located in Airway Heights, Washington in 1998 with a 40.1 acres site were approved; one (Allen Parish) was rendered moot by the tribe's decision to utilize a site that did not require approval; three (Council Bluffs, Salem, and Detroit) were officially rejected by either the Secretary of the Interior or the state governor; and the remainder, though not officially rejected, are apparently no longer under active consideration, due in at least some cases to the governor's stated opposition.

Further, the Commission's report would have been well served had it included a more comprehensive discussion concerning the regulatory authority shared by Tribes, the States and the Federal Government through the National Indian Gaming Commission.

IGRA is a comprehensive federal regulatory measure regarding on-reservation Indian gaming. It provides "a statutory basis for the regulation of gaming by an Indian tribe" and establishes federal standards for Indian gaming.<sup>9</sup> Congress authorized tribal regulation of Indian gaming under IGRA as an exercise of the Tribe's inherent sovereign authority. In IGRA, it provided a mechanism for state involvement in Indian gambling regulation through tribal-state compacts.

Federal oversight of Indian gaming under IGRA is the responsibility of the National Indian Gaming Commission ("NIGC"). The NIGC is required to approve all tribal gaming ordinances and to license and monitor and inspect the premises where all Class II Indian gaming is conducted. Class III gaming activities are allowed on Indian lands only when "located in a State that permits such gaming for any purpose by any person, organization, or entity." Class III gaming must also be conducted in accordance with tribal law and a tribal-state compact. The Commission has the authority to enforce the provisions of IGRA and its regulations by levying fines and issuing temporary, and permanent orders to close a gaming operation.

Under IGRA's terms a tribal-state compact may include provisions related to the following: the application of criminal and civil laws and regulations of the tribe or the state directly related to and necessary for the licensing and regulation of such activity, the allocation of criminal and civil jurisdiction between the state and the tribe necessary for the enforcement of such laws and regulations, the assessment by the state of amounts necessary to defray the costs of regulation under the compact, taxation by the tribe of the gaming activity of such amounts comparable to the amounts assessed by the state for costs of regulation, remedies for breach of contract, standards for the operation of such activities and the maintenance of the gaming facility, including license and any other subjects that are "directly related to the operation of gaming activities." Apart from reimbursement for costs associated with regulatory activities, states are not permitted to seek a tax or fee in exchange for agreeing to a compact.

Federal regulation of all Indian gaming was further enhanced on January 5, 1999 when the NIGC issued a final rule requiring tribes to establish minimum standards for internal controls ("MICS") for gaming operations on Indian lands and setting out standards which tribal MICS must meet.<sup>6</sup> The rule is effective February 4, 1999 and requires all tribes or tribal regulatory agencies to develop and adopt MICS by August 4 of this year. The NIGC explained the basis for the rule in the January 5, 1999 Federal Register announcement of the rule, stating that the overall growth, the increasing diversity and complexity of Indian gaming, and the cash-intensive nature of gaming create a "need for a minimum level of control, to apply universally throughout the industry." Therefore, the "commission concluded that in furtherance of its role in providing regulation of tribal gaming adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribes are the primary beneficiaries of the gaming operations, and to assure that gaming is conducted fairly and honestly by both the operators and players, the formulation and promulgation of minimum internal control standards governing tribal gaming were necessary and appropriate."

To comply with the NIGC rule, tribal standards must: be at least as stringent as the NIGC standards; contain standards for currency transaction reporting required in 25 C.F.R. Part 103; include standards addressing games not addressed in the NIGC standards; and establish a deadline not to exceed 12 months from February 4, 1999 for existing operations within their jurisdiction to

comply with the tribal MICS.<sup>17</sup> Gaming operations must establish internal controls that are at least as stringent as the tribal MICS.

Operations that begin operating after March 30, 1999 must comply before opening.

The rule contains standards for the following game categories and departments: bingo, pull tabs, card games, manual keno, computerized keno, pari-mutuel wagering, table games, gaming machines, cage and credit, internal audit, surveillance, electronic data processing, and complimentary service items, i.e. promotional allowances to customers.

The rule also establish three tiers of gaming operations with more stringent requirements applicable to the larger operations and less stringent standards for the smaller ones. Tier A gaming operations are those with no more than \$3 million in annual gross revenues. Tier B gaming operations are those with annual gross revenues between \$3 and \$ 10 million. Tier C gaming operations are those with more than \$10 million in annual gross revenues. Tier A gaming operations may request a variance for requirements in the MICS that are too burdensome for smaller operations.

Again, this report would have been much more meaningful had this information been included.

## **Conclusion**

I bring the Committee this information with the intent of supplementing the already lengthy record that exists concerning non-gaming economic development in Indian country and the regulatory framework under which gaming is currently being conducted. I am hopeful that the testimony the Commission received from over 100 tribal leaders from over 50 tribes will be used at some future date to show the true impact Indian gaming has had on both Indians and our non-Indian neighbors.